In the High Court for the States of Punjab and Haryana, at Chandigarh.

C.W.P.No. 4022 of 2004
Decided on Sept 08,2006.

Parveen Kumar ---- petitioner

vs.

The State of Punjab and others ---respondents.

Coram: Hon'ble Mr.Justice Jasbir Singh
Hon'ble Mr.Justice Pritam Pal

Present: Dr.Balram.K.Gupta,Sr. Advocate, with
Mr.Shireesh Gupta,Advocate,for the petitioner

Mr.P.S.Chhina, Addl. A.G,Punjab.

Mr. D.S.Patwalia,Advocate,for respondent Nos. 2 and 3.

Mr.S.S.Behl,Advocate,for respondent No.4.

Jasbir Singh J:(Oral)

This writ petition has been filed, with a prayer to quash selection of respondent Nos. 3 and 4, as Junior Engineers in the Department of Town and Country Planning,Punjab, and also the order dated dated September 18, 2003 (Annexure P-5) and order dated December 19, 2003 (Annexure P-4).

It is not in dispute that petitioner and respondent Nos. 3 and 4 applied for the post of Junior Engineers. Competitive examiantion was conducted by the Subordinate Services Selection Board Punjab. As per merit list, shown to this Court at the time of arguments,

petitioner's name figured at Serial No. 103, whereas names of respondent Nos. 3 and 4 figured at Serial Nos. 104 and 106 respectively. It is apparent from the record that names of the persons selected, were sent to different departments by the Subordinate Services Selection Board. Name of the petitioner was sent to the department of P.W.D. (Health),whereas names of the respondents, referred to above, were sent to the department of Town and Country Planning. As no post was available in the department of P.W.D.(Health), petitioner, though higher in merit, was not given the appointment,whereas the respondents were appointed as per recommendations made by the Board. Petitioner sent a representation in the year 2002, but to no effect. Thereafter, he filed writ a petition, which was disposed of by this Court vide order dated May 26,2003, directing the State to decide representation of the petitioner, by passing a speaking order. In consequent to the order, referred to above, order Annexure P-4 was passed, wherein it has been stated that since the State Government had imposed a ban, on fresh recruitment and has abolished vacant posts, appointment to the petitioner cannot be given. Claim of the petitioner for appointment was also rejected by the department of Housing and Urban Development, vide order Annexure P-5, by stating that his name was not sent to the afore-said department and as such, he did not have any claim for appointment, against the post in that department.

It is not in dispute that petitioner's name was higher in merit list prepared by the Board. On an earlier date, at the time of arguments, it was stated that the respondent Nos. 3 and 4 were working on their post for the last more than five years, accordingly a suggestion

was made to the Addl. Advocate General, Punjab, to see that the petitioner is adjusted against some vacant post and that the respondents be not disturbed. Mr. Chhina, has placed on record a communication, wherein it has been stated that the Govt. is ready to adjust the petitioner if he does not claim seniority over the candidates, who already stood appointed. This Court feels that so far as appointment of the petitioner against vacant post is concerned, it is justified. However, to deny him claim of seniory over and above the candidates, who were lower in merits than him, is not appreciable. Mr. Balram.K.Gupta, very fairly states that if the petitioner is now appointed, he shall not claim any arrears/ others benefits which may have accrued to him, if he had been appointed against the vacant post, at the time, when his name was sent. This Court feels that in view of the merit list and also in view of the fact that there is no fault on the part of the petitioner, his name was sent to a department, where no post was available , he cannot be denied the benefit of seniority over the candidates, who were already appointed and were lower in merit or in the alternative, petitioner is entitled to be adjusted against one of the respondent Nos. 3 and 4.

Confronted with this situation, Mr. Patwalia, very fairly states that respondent Nos. 3 and 4 shall have no objection if the petitioner is adjusted against vacant post and given seniority over and above them.

In view of the facts mentioned above, this writ petition is allowed. The petitioner is directed to be appointed as Junior Engineer and seniority be granted to him, over and above respondent Nos. 3 and 4.

However, it is made clear that he shall not be entitled to any monetarty benefit on account of his appointment now made, except for fixation of his salary . It is further made clear that in view of consensus arrived at beween the parties, respondent Nos. 3 and 4 shall not be disturbed from their place of postings, to adjust the petitioner.

A copy of this order be given dasti on usual payment.

(Jasbir Singh)
Judge

Sept 08,2006,
RR

(Pritam Pal)
Judge